

108TH CONGRESS  
1ST SESSION

# S. 550

To amend the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 6, 2003

Mr. CAMPBELL (for himself, Mr. INOUE, and Mr. THOMAS) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To amend the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Indian Pro-  
5 bate Reform Act of 2003”.

### 6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the Act of February 8, 1887 (commonly  
9 known as the “Indian General Allotment Act”) (25

1 U.S.C. 331 et seq.), which authorized the allotment  
2 of Indian reservations, did not permit Indian allot-  
3 ment owners to provide for the testamentary disposi-  
4 tion of the land that was allotted to them;

5 (2) that Act provided that allotments would de-  
6 scend according to State law of intestate succession  
7 based on the location of the allotment;

8 (3) the reliance of the Federal Government on  
9 the State law of intestate succession with respect to  
10 the descent of allotments has resulted in numerous  
11 problems affecting Indian tribes, members of Indian  
12 tribes, and the Federal Government, including—

13 (A) the increasingly fractionated ownership  
14 of trust and restricted land as that land is in-  
15 herited by successive generations of owners as  
16 tenants in common;

17 (B) the application of different rules of in-  
18 testate succession to each interest of a decedent  
19 in or to trust or restricted land if that land is  
20 located within the boundaries of more than 1  
21 State, which application—

22 (i) makes probate planning unneces-  
23 sarily difficult; and

24 (ii) impedes efforts to provide probate  
25 planning assistance or advice;

1 (C) the absence of a uniform general pro-  
 2 bate code for trust and restricted land, which  
 3 makes it difficult for Indian tribes to work co-  
 4 operatively to develop tribal probate codes; and

5 (D) the failure of Federal law to address  
 6 or provide for many of the essential elements of  
 7 general probate law, either directly or by ref-  
 8 erence, which—

9 (i) is unfair to the owners of trust and  
 10 restricted land (and heirs and devisees of  
 11 owners); and

12 (ii) makes probate planning more dif-  
 13 ficult; and

14 (4) a uniform Federal probate code would like-  
 15 ly—

16 (A) reduce the number of fractionated in-  
 17 terests in trust or restricted land;

18 (B) facilitate efforts to provide probate  
 19 planning assistance and advice;

20 (C) facilitate intertribal efforts to produce  
 21 tribal probate codes in accordance with section  
 22 206 of the Indian Land Consolidation Act (25  
 23 U.S.C. 2205); and

24 (D) provide essential elements of general  
 25 probate law that are not applicable on the date

1 of enactment of this Act to interests in trust or  
 2 restricted land.

3 **SEC. 3. INDIAN PROBATE REFORM.**

4 (a) TESTAMENTARY DISPOSITION.—Section 207 of  
 5 the Indian Land Consolidation Act (25 U.S.C. 2206) is  
 6 amended by striking subsection (a) and inserting the fol-  
 7 lowing:

8 “(a) TESTAMENTARY DISPOSITION.—

9 “(1) GENERAL DEVISE OF AN INTEREST IN  
 10 TRUST OR RESTRICTED LAND.—

11 “(A) IN GENERAL.—Subject to any appli-  
 12 cable Federal law relating to the devise or de-  
 13 scent of trust or restricted land, or a tribal pro-  
 14 bate code enacted in accordance with section  
 15 206, the owner of an interest in trust or re-  
 16 stricted land may devise such an interest to—

17 “(i) an Indian tribe with jurisdiction  
 18 over the land; or

19 “(ii) any Indian in trust or restricted  
 20 status (or as a passive trust interest as  
 21 provided for in section 207A).

22 “(B) STATUS.—The devise of an interest  
 23 in trust or restricted land to an Indian under  
 24 subparagraph (A)(ii) shall not alter the status  
 25 of such an interest as a trust or restricted in-

1           terest unless the testator provides that the in-  
 2           terest is to be held as a passive trust interest.

3           “(2) DEVISE OF TRUST OR RESTRICTED LAND  
 4           IN PASSIVE TRUST OR FEE.—

5           “(A) IN GENERAL.—Except as provided  
 6           under any applicable Federal law, any interest  
 7           in trust or restricted land that is not devised in  
 8           accordance with paragraph (1) may be devised  
 9           only—

10           “(i) as a life estate to any non-Indian  
 11           person, with the remainder being devised  
 12           only in accordance with clause (ii), sub-  
 13           paragraph (C), or paragraph (1)(A);

14           “(ii) to the lineal descendant or heir  
 15           of the first or second degree of the testator  
 16           or, if the testator does not have an heir of  
 17           the first or second degree or a lineal de-  
 18           scendant, to any lineal descendant of an  
 19           Indian grandparent of the testator, as a  
 20           passive trust interest (referred to in this  
 21           section as an ‘eligible passive trust devi-  
 22           see’); or

23           “(iii) in fee in accordance with sub-  
 24           paragraph (C).

1           “(B) PRESUMED DEVISE OF PASSIVE  
 2 TRUST INTEREST.—Any devise to an eligible  
 3 passive trust devisee, or any devise of a remain-  
 4 der interest from the devise of a life estate  
 5 under subparagraph (A)(ii), that does not indi-  
 6 cate whether the interest is devised as a passive  
 7 trust interest or a fee interest shall be consid-  
 8 ered to devise a passive trust interest.

9           “(C) DEVISE OF A FEE INTEREST.—Sub-  
 10 ject to subparagraph (D), any interest in trust  
 11 or restricted land that is not devised in accord-  
 12 ance with paragraph (1), or devised to an eligi-  
 13 ble passive trust devisee in accordance with sub-  
 14 paragraph (A), may be devised to a non-Indian  
 15 in fee.

16           “(D) LIMITATION.—Any interest in trust  
 17 or restricted land that is subject to section 4 of  
 18 the Act of June 18, 1934 (25 U.S.C. 464), may  
 19 be devised only in accordance with—

20                   “(i) that section;

21                   “(ii) subparagraph (A); or

22                   “(iii) paragraph (1).

23           “(3) DEVISE OF A PASSIVE TRUST INTEREST.—

24                   “(A) IN GENERAL.—The holder of an in-  
 25 terest in trust or restricted land that is held as

1 a passive trust interest may devise the interest  
 2 as a passive trust interest only to—

3 “(i)(I) any Indian; or

4 “(II) the Indian tribe that exercises  
 5 jurisdiction over the interest;

6 “(ii) the lineal descendants, or heirs  
 7 of the first or second degree, of the holder;

8 “(iii) any living descendant of the de-  
 9 cedent from whom the holder acquired the  
 10 interest by devise or descent; or

11 “(iv) any person that owns a pre-  
 12 existing interest or a passive trust interest  
 13 in the same parcel of land, if the pre-  
 14 existing interest is held in trust or re-  
 15 stricted status or in passive trust status.

16 “(B) INELIGIBLE DEVISEES AND INTES-  
 17 TATE SUCCESSION.—A passive trust interest  
 18 that is devised to a person that is not eligible  
 19 under subparagraph (A) or that is not disposed  
 20 of by a valid will shall pass in accordance with  
 21 the applicable law of intestate succession as  
 22 provided for in subsection (b).”.

23 (b) NONTESTAMENTARY DISPOSITION.—Section 207  
 24 of the Indian Land Consolidation Act (25 U.S.C. 2206)

1 is amended by striking subsection (b) and inserting the  
2 following:

3 “(b) NONTESTAMENTARY DISPOSITION.—

4 “(1) RULES OF DESCENT.—Subject to any ap-  
5 plicable Federal law relating to the devise or descent  
6 of trust or restricted property, any interest in trust  
7 or restricted land that is not disposed of by a valid  
8 will—

9 “(A) shall descend according to a tribal  
10 probate code that is approved in accordance  
11 with section 206; or

12 “(B) in the case of an interest in trust or  
13 restricted land to which such a code does not  
14 apply, shall descend in accordance with—

15 “(i) paragraphs (2) through (7);

16 “(ii) section 207A; and

17 “(iii) other applicable Federal law.

18 “(2) NO APPLICABLE CODE.—An intestate in-  
19 terest to which a code described in paragraph (1)  
20 does not apply—

21 “(A) shall include—

22 “(i) an interest acquired by a dece-  
23 dent through devise or inheritance (re-  
24 ferred to in this subsection as a ‘devise or  
25 inheritance interest’); or



“(ii) an interest acquired by a decedent by any means other than devise or inheritance (referred to in this subsection as an ‘acquired interest’), if—

“(I) the decedent—

“(aa) acquired additional undivided interest in the same parcel in which the interest is held, by a means other than devise or inheritance; or

“(bb) acquired land adjoining the parcel of land in which the interest is held; or

“(II) the parcel of land in which the interest is held includes the residence of the spouse of the decedent; and

“(B) shall descend as follows:

“(i) SURVIVING INDIAN SPOUSE.—

“(I) IN GENERAL.—If a decedent is survived by an Indian spouse, and the estate of the decedent includes 1 or more acquired interests, the spouse of the decedent shall receive all of the acquired interests.

1 “(II) DEVISE OR INHERITANCE  
 2 INTERESTS.—If a decedent is survived  
 3 by an Indian spouse, and the estate of  
 4 the decedent includes 1 or more devise  
 5 or inheritance interests—

6 “(aa) if the decedent is not  
 7 survived by an Indian heir of the  
 8 first or second degree, the spouse  
 9 of the decedent shall receive all  
 10 of the devise or inheritance inter-  
 11 ests; and

12 “(bb) if the decedent is sur-  
 13 vived by an Indian heir of the  
 14 first or second degree, the devise  
 15 or inheritance interest of the de-  
 16 cedent shall descend in accord-  
 17 ance with paragraph (3)(A).

18 “(ii) SURVIVING NON-INDIAN  
 19 SPOUSE.—

20 “(I) IN GENERAL.—If a decedent  
 21 is survived by a non-Indian spouse,  
 22 and the estate of the decedent in-  
 23 cludes 1 or more acquired interests—

1           “(aa) the spouse of the dece-  
 2           dent shall receive a life estate in  
 3           each acquired interest; and

4           “(bb)(AA) if the decedent is  
 5           survived by an Indian heir of the  
 6           first or second degree, the re-  
 7           mainder interests shall descend  
 8           in accordance with paragraph  
 9           (3)(A); and

10           “(BB) if the decedent is not  
 11           survived by an Indian heir of the  
 12           first or second degree, the re-  
 13           mainder interest shall descend in  
 14           accordance with paragraph  
 15           (3)(C).

16           “(II) DEVISE OR INHERITANCE  
 17           INTERESTS.—If the estate of a dece-  
 18           dent described in subclause (I) in-  
 19           cludes 1 or more devise or inheritance  
 20           interests—

21           “(aa) if the decedent is sur-  
 22           vived by an Indian heir of the  
 23           first or second degree, the devise  
 24           or inheritance interests shall de-

1 scend in accordance with para-  
2 graph (3)(A); and

3 “(bb) if the decedent is not  
4 survived by an Indian heir of the  
5 first or second degree, the devise  
6 or inheritance interests shall de-  
7 scend in accordance with para-  
8 graph (3)(C).

9 “(iii) NO SURVIVING SPOUSE.—If a  
10 decedent is not survived by a spouse, and  
11 the estate of the decedent includes 1 or  
12 more acquired interests or 1 or more de-  
13 vise or inheritance interests—

14 “(I) if the decedent is survived by  
15 an Indian heir of the first or second  
16 degree, the acquired interests or de-  
17 vise or inheritance interests shall de-  
18 scend in accordance with paragraph  
19 (3)(A); and

20 “(II) if the decedent is not sur-  
21 vived by an Indian heir of the first or  
22 second degree, the acquired interests  
23 or devise or inheritance interests shall  
24 descend in accordance with paragraph  
25 (3)(C).

1           “(3) RULES GOVERNING DESCENT OF ES-  
2       TATE.—

3           “(A) INDIAN HEIRS.—For the purpose of  
4       this section, an Indian heir of the first or sec-  
5       ond degree shall inherit in the following order:

6           “(i) To the Indian children of the de-  
7       cedent (or if 1 or more of those Indian  
8       children do not survive the decedent, the  
9       Indian children of the deceased child of the  
10      decedent, by right of representation) shall  
11      inherit in equal shares.

12          “(ii) If the decedent has no Indian  
13      children (or grandchildren that inherit by  
14      right of representation under clause (i)), to  
15      the Indian brothers and sisters of the dece-  
16      dent, in equal shares.

17          “(iii) If the decedent has no Indian  
18      brothers or sisters, to the Indian parent or  
19      parents of the decedent.

20          “(B) RIGHT OF REPRESENTATION.—In  
21      any case involving the determination of a right  
22      of representation—

23          “(i) each interest in trust land shall  
24      be equally divided into a number of shares  
25      that equals the sum obtained by adding—

1                   “(I) the number of surviving  
 2                   heirs in the nearest degree of kinship;  
 3                   and

4                   “(II) the number of deceased in-  
 5                   dividuals in that same degree, if any,  
 6                   who left issue who survive the dece-  
 7                   dent;

8                   “(ii) each surviving heir described in  
 9                   clause (i)(I) shall receive 1 share; and

10                  “(iii)(I) each deceased individual de-  
 11                  scribed in clause (i)(II) shall receive 1  
 12                  share; and

13                  “(II) that share shall be divided  
 14                  equally among the surviving issue of the  
 15                  deceased person.

16                  “(C) NO INDIAN HEIRS.—

17                  “(i) DEFINITION OF COLLATERAL  
 18                  HEIR.—In this subparagraph, the term  
 19                  ‘collateral heir’ means an aunt, uncle,  
 20                  niece, nephew, or first cousin of a dece-  
 21                  dent.

22                  “(ii) NO HEIRS.—If a decedent does  
 23                  not have an Indian heir of the first or sec-  
 24                  ond degree, an interest shall descend to  
 25                  any Indian collateral heir who is a co-

1 owner of an interest owned by the dece-  
 2 dent.

3 “(iii) MULTIPLE COLLATERAL  
 4 HEIRS.—If—

5 “(I) an Indian collateral heir  
 6 owns an interest to which clause (ii)  
 7 applies that is larger than the interest  
 8 held by any other such collateral heir,  
 9 the interest shall descend to the col-  
 10 lateral heir that owns the largest un-  
 11 divided interest in the parcel; or

12 “(II) 2 or more collateral heirs  
 13 own equal shares in an interest to  
 14 which clause (ii) applies, the interest  
 15 shall be divided equally among those  
 16 collateral heirs.

17 “(iv) NO OWNERSHIP.—If none of the  
 18 Indian collateral heirs of a decedent owns  
 19 an interest to which clause (ii) applies,  
 20 subject to clause (v), the interest shall de-  
 21 scend to the Indian tribe that exercises ju-  
 22 risdiction over the parcel of trust or re-  
 23 stricted land involved.

24 “(v) ACQUISITION OF INTEREST.—

1                   “(I) IN GENERAL.—Notwith-  
 2                   standing clause (iv), an Indian co-  
 3                   owner of a parcel of trust or restricted  
 4                   land may acquire an interest that  
 5                   would otherwise descend under that  
 6                   clause by paying into the estate of the  
 7                   decedent, before the close of the pro-  
 8                   bate of the estate, the fair market  
 9                   value of the interest in or to the land.

10                   “(II) MULTIPLE CO-OWNERS.—If  
 11                   more than 1 Indian co-owner (includ-  
 12                   ing the Indian tribe referred to in  
 13                   clause (iv)) offers to pay for an inter-  
 14                   est described in subclause (I), the  
 15                   highest bidder shall acquire the inter-  
 16                   est.

17                   “(4) SPECIAL RULE RELATING TO SURVIVAL.—  
 18                   In the case of intestate succession under this sec-  
 19                   tion, if an individual who fails to survive a decedent  
 20                   by at least 120 hours, as established by clear and  
 21                   convincing evidence—

22                   “(A) the individual shall be deemed to have  
 23                   predeceased the decedent for the purpose of in-  
 24                   testate succession; and



1           “(B) the heirs of the decedent shall be de-  
2           termined in accordance with this section.

3           “(5) PRETERMITTED SPOUSES AND CHIL-  
4           DREN.—

5           “(A) SPOUSES.—

6           “(i) IN GENERAL.—Except as pro-  
7           vided in clause (ii), if the surviving spouse  
8           of a testator married the testator after the  
9           testator executed the will of the testator,  
10          the surviving spouse shall receive the intes-  
11          tate share in trust or restricted land that  
12          the spouse would have received if the tes-  
13          tator had died intestate.

14          “(ii) EXCEPTION.—Clause (i) shall  
15          not apply to an interest in trust or re-  
16          stricted land in a case in which—

17               “(I) the will of a testator is exe-  
18               cuted before the date of enactment of  
19               this subparagraph;

20               “(II)(aa) the spouse of a testator  
21               is a non-Indian; and

22               “(bb) the testator devised the in-  
23               terests in trust or restricted land of  
24               the testator to 1 or more Indians;

1 “(III) it appears, based on an ex-  
 2 amination of the will or other evi-  
 3 dence, that the will was made in con-  
 4 templation of the marriage of the tes-  
 5 tator to the surviving spouse;

6 “(IV) the will expresses the in-  
 7 tention that the will is to be effective  
 8 notwithstanding any subsequent mar-  
 9 riage; or

10 “(V)(aa) the testator provided for  
 11 the spouse by a transfer of funds or  
 12 property outside the will; and

13 “(bb) an intent that the transfer  
 14 be in lieu of a testamentary provision  
 15 is demonstrated by statements of the  
 16 testator or through a reasonable infer-  
 17 ence based on the amount of the  
 18 transfer or other evidence.

19 “(B) CHILDREN.—

20 “(i) IN GENERAL.—If a testator exe-  
 21 cuted the will of the testator before the  
 22 birth or adoption of 1 or more children of  
 23 the testator, and the omission of the chil-  
 24 dren from the will is a product of inadvert-  
 25 ence rather than an intentional omission,

1 the children shall share in the intestate in-  
 2 terests of the decedent in trust or re-  
 3 stricted land as if the decedent had died  
 4 intestate.

5 “(ii) ADOPTED HEIRS.—Any person  
 6 recognized as an heir by virtue of adoption  
 7 under the Act of July 8, 1940 (25 U.S.C.  
 8 372a), shall be treated as the child of a de-  
 9 cedent under this subsection.

10 “(6) DIVORCE.—

11 “(A) SURVIVING SPOUSE.—

12 “(i) IN GENERAL.—An individual who  
 13 is divorced from a decedent, or whose mar-  
 14 riage to the decedent has been annulled,  
 15 shall not be considered to be a surviving  
 16 spouse unless, by virtue of a subsequent  
 17 marriage, the individual is married to the  
 18 decedent at the time of death of the dece-  
 19 dent.

20 “(ii) SEPARATION.—A decree of sepa-  
 21 ration that does not dissolve a marriage,  
 22 and terminate the status of husband and  
 23 wife, shall not be considered a divorce for  
 24 the purpose of this subsection.

1           “(iii) NO EFFECT ON ADJUDICA-  
 2           TIONS.—Nothing in clause (i) prevents an  
 3           entity responsible for adjudicating an in-  
 4           terest in trust or restricted land from giv-  
 5           ing effect to a property right settlement if  
 6           1 of the parties to the settlement dies be-  
 7           fore the issuance of a final decree dis-  
 8           solving the marriage of the parties to the  
 9           property settlement.

10           “(B) EFFECT OF SUBSEQUENT DIVORCE  
 11           ON A WILL OR DEVISE.—

12           “(i) IN GENERAL.—If, after executing  
 13           a will, a testator is divorced or the mar-  
 14           riage of the testator is annulled, on the ef-  
 15           fective date of the divorce or annulment,  
 16           any disposition of interests in trust or re-  
 17           stricted land made by the will to the  
 18           former spouse of the testator shall be con-  
 19           sidered to be revoked unless the will ex-  
 20           pressly provides otherwise.

21           “(ii) PROPERTY.—Property that is  
 22           prevented from passing to a former spouse  
 23           of a decedent under clause (i) shall pass as  
 24           if the former spouse failed to survive the  
 25           decedent.

1                   “(iii) PROVISIONS OF WILLS.—Any  
 2                   provision of a will that is considered to be  
 3                   revoked solely by operation of this sub-  
 4                   paragraph shall be revived by the remar-  
 5                   riage of a testator to the former spouse of  
 6                   the testator.

7                   “(7) NOTICE.—

8                   “(A) IN GENERAL.—To the maximum ex-  
 9                   tent practicable, the Secretary shall notify each  
 10                  owner of trust and restricted land of the provi-  
 11                  sions of this Act.

12                  “(B) COMBINED NOTICES.—The notice  
 13                  under subparagraph (A) may, at the discretion  
 14                  of the Secretary, be provided with the notice re-  
 15                  quired under section 207(g).”.

16                  “(c) RULE OF CONSTRUCTION.—Section 207 of the  
 17                  Indian Land Consolidation Act (25 U.S.C. 2206) is  
 18                  amended by adding at the end the following:

19                  “(h) APPLICABLE FEDERAL LAW.—

20                  “(1) IN GENERAL.—For purpose of subsections  
 21                  (a) and (b), any reference to applicable Federal law  
 22                  includes—

23                         “(A) Public Law 91–627 (84 Stat. 1874);

24                         “(B) Public Law 92–377 (86 Stat. 530);

25                         “(C) Public Law 92–443 (86 Stat. 744);

1 “(D) Public Law 96–274 (94 Stat. 537);

2 and

3 “(E) Public Law 98–513 (98 Stat. 2411).

4 “(2) NO EFFECT ON LAWS.—Nothing in this  
5 section amends or otherwise affects any law de-  
6 scribed in paragraph (1), or any other Federal law,  
7 that provides for the devise and descent of any trust  
8 or restricted land located on a specific Indian res-  
9 ervation.”.

10 (d) PASSIVE TRUST INTEREST STATUS FOR TRUST  
11 OR RESTRICTED LAND.—The Indian Land Consolidation  
12 Act is amended by inserting after section 207 (25 U.S.C.  
13 2206) the following:

14 **“SEC. 207A. PASSIVE TRUST INTEREST STATUS FOR TRUST**  
15 **OR RESTRICTED LAND.**

16 “(a) PASSIVE TRUST INTEREST STATUS.—

17 “(1) IN GENERAL.—The owner of an interest in  
18 trust or restricted land may submit to the Secretary  
19 an application requesting that the interest be held in  
20 passive trust interest status.

21 “(2) AUTHORITY.—An application under para-  
22 graph (1) may authorize the Secretary to amend any  
23 existing lease or agreement with respect to the inter-  
24 est that is the subject of the application.

1       “(b) APPROVAL.—On the approval of an application  
 2 by the Secretary under subsection (a), an interest in trust  
 3 or restricted land covered by the application shall be held  
 4 as a passive trust interest in accordance with this section.

5       “(c) REQUIREMENTS.—Except as provided in this  
 6 section, an interest in trust or restricted land that is held  
 7 as a passive trust interest under this section—

8               “(1) shall continue to be covered under any ap-  
 9 plicable tax-exempt status, and continue to be sub-  
 10 ject to any restrictions on alienation, until the inter-  
 11 est is patented in fee;

12              “(2) may, without the approval of the Sec-  
 13 retary, be—

14                   “(A) leased for a period of not to exceed  
 15 25 years;

16                   “(B) mortgaged in accordance with the Act  
 17 of March 29, 1956 (25 U.S.C. 483a); or

18                   “(C) sold or conveyed to—

19                           “(i) an Indian;

20                           “(ii) the Indian tribe that exercises  
 21 jurisdiction over the interest; or

22                           “(iii) a co-owner of an interest in the  
 23 parcel of land in which the interest is held,  
 24 if the co-owner owns a pre-existing trust,

1                   restricted interest, or a passive trust inter-  
2                   est in the parcel; and

3                   “(3) may be subject to an ordinance or resolu-  
4                   tion enacted under subsection (d).

5                   “(d) ORDINANCE OR RESOLUTION FOR REMOVAL OF  
6 STATUS.—

7                   “(1) IN GENERAL.—The governing body of the  
8                   Indian tribe that exercises jurisdiction over an inter-  
9                   est in trust or restricted land that is held as a pas-  
10                  sive trust interest in accordance with this section  
11                  may enact an ordinance or resolution to permit the  
12                  owner of the interest to apply to the Secretary for  
13                  the removal of the trust or restricted status of any  
14                  portion of the land that is subject to the jurisdiction  
15                  of the Indian tribe.

16                  “(2) REVIEW BY SECRETARY.—The Secretary  
17                  shall review, and may approve, an ordinance or reso-  
18                  lution enacted by an Indian tribe in accordance with  
19                  paragraph (1) if the Secretary determines that the  
20                  ordinance or resolution—

21                         “(A) is consistent with this Act; and

22                         “(B) would not increase fractionated own-  
23                         ership of Indian land.

24                   “(e) REVENUES OR ROYALTIES.—



1           “(1) IN GENERAL.—Except as provided in para-  
 2           graph (2), the Secretary shall not be responsible for  
 3           the collection of or accounting for any lease revenues  
 4           or royalties accruing to an interest held as a passive  
 5           trust interest by any person under this section.

6           “(2) EXCEPTION.—Paragraph (1) shall not  
 7           apply to an interest described in that paragraph if  
 8           the Secretary approves an application to take the in-  
 9           terest into active trust status on behalf of an Indian  
 10          or an Indian tribe in accordance with regulations  
 11          promulgated by the Secretary.

12          “(3) AUTHORITY OF SECRETARY.—Nothing in  
 13          this subsection alters any authority or responsibility  
 14          of the Secretary with respect to an interest in trust  
 15          or restricted land held in active trust status (includ-  
 16          ing an undivided interest included in the same parcel  
 17          of land as an undivided passive trust interest).

18          “(f) JURISDICTION OVER PASSIVE TRUST INTER-  
 19          EST.—With respect to an interest in trust or restricted  
 20          land that is devised or held as a passive trust interest  
 21          under this section—

22                 “(1) an Indian tribe that exercises jurisdiction  
 23                 over such an interest shall continue to exercise juris-  
 24                 diction over the land that is held as a passive trust  
 25                 interest; and

1           “(2) any person holding, leasing, or otherwise  
2           using the land shall be considered to consent to the  
3           jurisdiction of the Indian tribe with respect to the  
4           use of the land (including any effects associated with  
5           any use of the land).

6           “(g) PROBATE OF PASSIVE TRUST INTERESTS.—

7           “(1) IN GENERAL.—An interest in trust or re-  
8           stricted land that is held as a passive trust interest  
9           under this section shall be subject to—

10           “(A) probate by the Secretary in accord-  
11           ance with this Act; and

12           “(B) all other laws applicable to the pro-  
13           bate of trust or restricted land.

14           “(2) COMMENCEMENT OF PROBATE.—Any in-  
15           terested party may file an application to commence  
16           the probate of an interest in trust or restricted land  
17           held as a passive trust interest.

18           “(h) REGULATIONS.—The Secretary shall promul-  
19           gate such regulations as are necessary to carry out this  
20           section.”.

21   **SEC. 4. PARTITION OF INDIAN LAND.**

22           Section 205 of the Indian Land Consolidation Act  
23           (25 U.S.C. 2204) is amended by adding at the end the  
24           following:

25           “(c) PARTITION.—

1 “(1) DEFINITIONS.—In this subsection:

2 “(A) ELIGIBLE INDIAN TRIBE.—The term  
3 ‘eligible Indian tribe’ means an Indian tribe  
4 that—

5 “(i) owns eligible land; and

6 “(ii) consents to partition of the eligi-  
7 ble land.

8 “(B) ELIGIBLE LAND.—The term ‘eligible  
9 land’ means an undivided parcel of land that—

10 “(i) is located within the reservation  
11 of an Indian tribe; or

12 “(ii) is otherwise under the jurisdic-  
13 tion of an Indian tribe.

14 “(2) REQUIREMENTS.—Notwithstanding any  
15 other provision of law, in accordance with this sub-  
16 section and subject to paragraphs (3), (4), and  
17 (5)—

18 “(A) an eligible Indian tribe may apply to  
19 the Secretary for the partition of a parcel of eli-  
20 gible land; and

21 “(B) the Secretary may commence a proc-  
22 ess for partitioning the eligible land under this  
23 subsection if—

24 “(i) the eligible Indian tribe meets the  
25 applicable ownership requirement under

1 subparagraph (A) or (B) of paragraph (3);

2 or

3 “(ii) the Secretary determines that it  
4 is reasonable to believe that the partition  
5 of the eligible land owned would be in ac-  
6 cordance with paragraph (3)(C).

7 “(3) TRIBAL OWNERSHIP.—A parcel of eligible  
8 land may be partitioned under this subsection if,  
9 with respect to the eligible Indian tribe involved—

10 “(A) the eligible Indian tribe owns 50 per-  
11 cent or more of the undivided interest in the  
12 parcel;

13 “(B) the eligible Indian tribe is the owner  
14 of the largest quantity of undivided interest in  
15 the parcel; or

16 “(C) the owners of undivided interests  
17 equal to at least 50 percent of the undivided in-  
18 terest in the parcel (including any undivided in-  
19 terest owned by the eligible Indian tribe) con-  
20 sent or do not object to the partition.

21 “(4) TRIBAL CONSENT.—A parcel of land that  
22 is located within the reservation of an Indian tribe  
23 or otherwise under the jurisdiction of an Indian tribe  
24 shall be partitioned under this subsection only if the  
25 Indian tribe does not object to the partition.

1           “(5) APPLICABILITY.—This subsection shall not  
 2       apply to any parcel of land that is the bona fide resi-  
 3       dence of any person unless the person consents to  
 4       the partition in writing.

5           “(6) PARTITION IN KIND.—

6               “(A) IN GENERAL.—The Secretary shall  
 7       commence the partition process described in  
 8       subparagraph (B) if—

9                   “(i) an eligible Indian tribe applies to  
 10       partition eligible land under this para-  
 11       graph; and

12                   “(ii)(I) the Secretary determines that  
 13       the eligible Indian tribe meets the applica-  
 14       ble ownership requirements of subpara-  
 15       graph (A) or (B) of paragraph (3); or

16                   “(II) the Secretary determines that it  
 17       is reasonable to believe that the partition  
 18       would be in accordance with paragraph  
 19       (3)(C).

20           “(B) PARTITION PROCESS.—In carrying  
 21       out any partition under this paragraph, the  
 22       Secretary shall—

23                   “(i) provide, to each owner of any un-  
 24       divided interest in eligible land to be parti-  
 25       tioned, through publication or other appro-

1           priate means, notice of the proposed parti-  
2           tion;

3           “(ii) make available to any interested  
4           party a copy of any proposed partition  
5           plan submitted by an eligible Indian tribe  
6           or proposed by the Secretary; and

7           “(iii) review—

8           “(I) any proposed partition plan  
9           submitted by any owner of an undi-  
10          vided interest in the eligible land; and

11          “(II) any comments or objections  
12          concerning a partition, or any pro-  
13          posed plan of partition, submitted by  
14          any owner or any other interested  
15          party.

16          “(C) DETERMINATION NOT TO PARTI-  
17          TION.—If the Secretary determines that a par-  
18          cel of eligible land cannot be partitioned in a  
19          manner that is fair and equitable to the owners  
20          of the eligible land, the Secretary shall inform  
21          each owner of the eligible land of—

22          “(i) the determination of the Sec-  
23          retary; and

24          “(ii) the right of the owner to appeal  
25          the determination.

“(D) PARTITION WITH CONSENT OF ELIGIBLE INDIAN TRIBE.—If the Secretary determines that a parcel of eligible land may be partitioned in a manner that is fair and equitable to the owners of the eligible land, and the applicable eligible Indian tribe meets the applicable ownership requirements under subparagraph (A) or (B) of paragraph (3), the Secretary shall—

“(i) approve a plan of partition;

“(ii) provide notice to the owners of the eligible land of the determination of the Secretary;

“(iii) make a copy of the plan of partition available to each owner of the eligible land; and

“(iv) inform each owner of the right to appeal the determination of the Secretary to partition the eligible land in accordance with the plan.

“(E) PARTITION WITH CONSENT; IMPLIED CONSENT.—If the Secretary determines that a parcel of eligible land may be partitioned in a manner that is fair and equitable to the owners of the eligible land, but the eligible Indian tribe

involved does not meet the applicable ownership requirements under subparagraph (A) or (B) of paragraph (3), the Secretary shall—

“(i)(I) make a plan of partition available to the owners of the parcel; and

“(II) inform the owners that the eligible land will be partitioned in accordance with the plan if the owners of 50 percent or more of undivided ownership interest in the eligible land—

“(aa) consent to the partition; or

“(bb) do not object to the partition by such date as may be established by the Secretary; and

“(ii)(I) if the owners of 50 percent or more of undivided ownership interest in the eligible land consent to the partition or do not object by a date established by the Secretary under clause (i)(II)(bb), inform the owners of the eligible land that—

“(aa) the plan for partition is final; and

“(bb) the owners have the right to appeal the determination of the



1 Secretary to partition the eligible  
2 land; or

3 “(II) if the owners of 50 percent or  
4 more of the undivided ownership interest  
5 in the eligible land object to the partition,  
6 inform the eligible Indian tribe of the ob-  
7 jection.

8 “(F) SUCCESSIVE PARTITION PLANS.—In  
9 carrying out subparagraph (E) in accordance  
10 with paragraph (3)(C), the Secretary may, in  
11 accordance with subparagraph (E)—

12 “(i) approve 1 or more successive  
13 plans of partition; and

14 “(ii) make those plans available to the  
15 owners of the eligible land to be parti-  
16 tioned.

17 “(G) PLAN OF PARTITION.—A plan of par-  
18 tition approved by the Secretary in accordance  
19 with subparagraph (D) or (E)—

20 “(i) may determine that 1 or more of  
21 the undivided interests in a parcel of eligi-  
22 ble land are not susceptible to a partition  
23 in kind;

24 “(ii) may provide for the sale or ex-  
25 change of those undivided interests to—

1                   “(I) 1 or more of the owners of  
 2                   undivided interests in the eligible  
 3                   land; or

4                   “(II) the Secretary in accordance  
 5                   with section 213; and

6                   “(iii) shall provide that the sale of any  
 7                   undivided interest referred to in clause (ii)  
 8                   shall be for not less than the fair market  
 9                   value of the interest.

10                  “(7) PARTITION BY SALE.—

11                  “(A) IN GENERAL.—The Secretary shall  
 12                  commence the partition process described in  
 13                  subparagraph (B) if—

14                  “(i) an eligible Indian tribe applies to  
 15                  partition a parcel of eligible land under  
 16                  this subsection; and

17                  “(ii)(I) the Secretary determines that  
 18                  the Indian tribe meets the applicable own-  
 19                  ership requirements of subparagraph (A)  
 20                  or (B) of paragraph (3); or

21                  “(II) the Secretary determines that it  
 22                  is reasonable to believe that the partition  
 23                  would be in accordance with paragraph  
 24                  (3)(C).

1           “(B) PARTITION PROCESS.—In carrying  
2 out any partition of eligible land under this  
3 paragraph, the Secretary—

4           “(i) shall conduct a preliminary ap-  
5 praisal of the eligible land;

6           “(ii) shall provide to the owners of the  
7 eligible land, through publication or other  
8 appropriate means—

9           “(I) notice of the application of  
10 the eligible Indian tribe to partition  
11 the eligible land; and

12           “(II) access to the preliminary  
13 appraisal conducted in accordance  
14 with clause (i);

15           “(iii) shall inform each owner of the  
16 eligible land of the right to submit to the  
17 Secretary comments relating to the pre-  
18 liminary appraisal;

19           “(iv) may, based on comments re-  
20 ceived under clause (iii), modify the pre-  
21 liminary appraisal or provide for the con-  
22 duct of a new appraisal; and

23           “(v) shall—

24           “(I) issue a final appraisal for  
25 the eligible land;

1 “(II) provide to the owners of the  
 2 eligible land and the appropriate In-  
 3 dian tribes access to the final ap-  
 4 praisal; and

5 “(III) inform the Indian tribes of  
 6 the right to appeal the final appraisal.

7 “(C) PURCHASE BY ELIGIBLE INDIAN  
 8 TRIBE.—If an eligible Indian tribe enters into  
 9 an agreement with the Secretary to pay fair  
 10 market value for eligible land partitioned under  
 11 this subsection, as determined by the final ap-  
 12 praisal of the eligible land issued under sub-  
 13 paragraph (B)(v)(I) (including any appraisal  
 14 issued by the Secretary after an appeal by the  
 15 Indian tribe under subparagraph (B)(v)(III)),  
 16 and the eligible Indian tribe meets the applica-  
 17 ble ownership requirements of subparagraph  
 18 (A) or (B) of paragraph (3), the Secretary  
 19 shall—

20 “(i) provide to each owner of the eligi-  
 21 ble land notice of the agreement; and

22 “(ii) inform the owners of the right to  
 23 appeal the decision of the Secretary to  
 24 enter into the agreement (including the  
 25 right to appeal any final appraisal of the

1 parcel referred to in subparagraph  
2 (B)(v)(III)).

3 “(D) PARTITION WITH CONSENT; IMPLIED  
4 CONSENT.—

5 “(i) IN GENERAL.—If an eligible In-  
6 dian tribe agrees to pay fair market value  
7 for eligible land partitioned under this sub-  
8 section, as determined by the final ap-  
9 praisal of the eligible land issued under  
10 subparagraph (B)(v)(I) (including any ap-  
11 praisal issued by the Secretary after an ap-  
12 peal by the Indian tribe under subpara-  
13 graph (B)(v)(III)), but does not meet the  
14 applicable ownership requirements of sub-  
15 paragraph (A) or (B) of paragraph (3), the  
16 Secretary shall—

17 “(I) provide to each owner of the  
18 undivided interest in the eligible land  
19 notice that the Indian tribe did not  
20 meet the requirements; and

21 “(II) inform the owners that the  
22 eligible land will be partitioned by sale  
23 unless the partition is opposed by the  
24 owners of 50 percent or more of the

1 undivided ownership interest in the el-  
2 igible land.

3 “(ii) FAILURE TO OBJECT TO PARTI-  
4 TION.—If the owners of 50 percent or  
5 more of undivided ownership interest in or  
6 to a parcel of eligible land consent to the  
7 partition of the eligible land, or do not ob-  
8 ject to the partition by such date as may  
9 be established by the Secretary, the Sec-  
10 retary shall inform the owners of the eligi-  
11 ble land of the right to appeal the deter-  
12 mination of the Secretary to partition the  
13 eligible land (including the results of the  
14 final appraisal issued under subparagraph  
15 (B)(v)(I)).

16 “(iii) OBJECTION TO PARTITION.—If  
17 the owners of 50 percent or more of the  
18 undivided ownership interest in a parcel of  
19 eligible land object to the partition of the  
20 eligible land—

21 “(I) the Secretary shall notify the  
22 eligible Indian tribe of the objection;  
23 and

24 “(II) the eligible Indian tribe and  
25 the Secretary may agree to increase

1                   the amount offered to purchase the  
2                   undivided ownership interests in the  
3                   eligible land.

4           “(8) ENFORCEMENT.—

5                   “(A) IN GENERAL.—If, with respect to a  
6                   parcel of eligible land, a partition in kind is ap-  
7                   proved under subparagraph (D) or (E) of para-  
8                   graph (6), or a partition by sale is approved  
9                   under paragraph (7)(C), and the owner of an  
10                  interest in or to the eligible land fails to convey  
11                  the interest to the Indian tribe, the Indian tribe  
12                  or the United States may—

13                   “(i) bring a civil action in the United  
14                   States district court for the district in  
15                   which the eligible land is located; and

16                   “(ii) request the court to issue an ap-  
17                   propriate order for the partition in kind, or  
18                   partition by sale to the Indian tribe, of the  
19                   eligible land.

20                  “(B) FEDERAL ROLE.—With respect to  
21                  any civil action brought under subparagraph  
22                  (A)—

23                   “(i) the United States—

24                   “(I) shall receive notice of the  
25                   civil action; and

1 “(II) may be a party to the civil  
 2 action; and  
 3 “(ii) the civil action shall not be dis-  
 4 missed, and no relief requested shall be de-  
 5 nied, on the ground that the civil action is  
 6 against the United States or that the  
 7 United States is an indispensable party.”.

8 **SEC. 5. ADDITIONAL AMENDMENTS.**

9 (a) IN GENERAL.—The Indian Land Consolidation  
 10 Act (25 U.S.C. 2201 et seq.) is amended—

11 (1) in the second sentence of section 205(a) (25  
 12 U.S.C. 2204(a)), by striking “over 50 per centum of  
 13 the undivided interests” and inserting “undivided in-  
 14 terests equal to at least 50 percent of the undivided  
 15 interest”;

16 (2) in section 206 (25 U.S.C. 2205)—

17 (A) in subsection (a), by striking para-  
 18 graph (3) and inserting the following:

19 “(3) TRIBAL PROBATE CODES.—Except as pro-  
 20 vided in any applicable Federal law, the Secretary  
 21 shall not approve a tribal probate code, or an  
 22 amendment to such a code, that prevents the devise  
 23 of an interest in trust or restricted land to—

24 “(A) an Indian lineal descendant of the  
 25 original allottee; or



1 “(B) an Indian who is not a member of the  
 2 Indian tribe that exercises jurisdiction over  
 3 such an interest, unless the code provides for—

4 “(i) the renouncing of interests to eli-  
 5 gible devisees in accordance with the code;

6 “(ii) the opportunity for a devisee who  
 7 is the spouse or lineal descendant of a tes-  
 8 tator to reserve a life estate; and

9 “(iii) payment of fair market value in  
 10 the manner prescribed under subsection  
 11 (c)(2).”; and

12 (B) in subsection (c)—

13 (i) in paragraph (1)—

14 (I) by striking the paragraph  
 15 heading and inserting the following:

16 “(1) AUTHORITY.—

17 “(A) IN GENERAL.—”;

18 (II) in the first sentence of sub-  
 19 paragraph (A) (as designated by  
 20 clause (i)), by striking “section  
 21 207(a)(6)(A) of this title” and insert-  
 22 ing “section 207(a)(2)(A)(ii),  
 23 207(a)(2)(C), or 207(a)(3)”; and

24 (III) by striking the last sentence  
 25 and inserting the following:

“(B) TRANSFER.—The Secretary shall transfer payments received under subparagraph (A) to any person or persons who would have received an interest in land if the interest had not been acquired by the Indian tribe in accordance with this paragraph.”; and

(ii) in paragraph (2)—

(I) in subparagraph (A)—

(aa) by striking the subparagraph heading and all that follows through “Paragraph (1) shall apply” and inserting the following:

“(A) NONAPPLICABILITY TO CERTAIN INTERESTS.—

“(i) IN GENERAL.—Paragraph (1) shall not apply”;

(bb) in clause (i) (as designated by item (a)), by striking “if, while” and inserting the following: “if—

“(I) while”;

(cc) by striking the period at the end and inserting “; or”; and

1 (dd) by adding at the end  
2 the following:

3 “(II)(aa) the interest is part of a  
4 family farm that is devised to a mem-  
5 ber of the family of the decedent; and

6 “(bb) the devisee agrees that the  
7 Indian tribe that exercises jurisdiction  
8 over the land will have the oppor-  
9 tunity to acquire the interest for fair  
10 market value if the interest is offered  
11 for sale to an entity that is not a  
12 member of the family of the owner of  
13 the land.

14 “(ii) RECORDING OF INTEREST.—On  
15 request by an Indian tribe described in  
16 clause (i)(II)(bb), a restriction relating to  
17 the acquisition by the Indian tribe of an  
18 interest in a family farm involved shall be  
19 recorded as part of the deed relating to the  
20 interest involved.

21 “(iii) MORTGAGE AND FORE-  
22 CLOSURE.—Nothing in clause (i)(II) pre-  
23 vents or limits the ability of an owner of  
24 land to which that clause applies to mort-  
25 gage the land or limit the right of the enti-

ty holding such a mortgage to foreclose or otherwise enforce such a mortgage agreement in accordance with applicable law.

“(iv) DEFINITION OF MEMBER OF THE FAMILY.—In this paragraph, the term ‘member of the family’, with respect to a decedent or landowner, means—

“(I) a lineal descendant of a decedent or landowner;

“(II) a lineal descendant of the grandparent of a decedent or landowner;

“(III) the spouse of a descendant or landowner described in subclause (I) or (II); and

“(IV) the spouse of a decedent or landowner.”; and

(II) in subparagraph (B), by striking “subparagraph (A)” and all that follows through “207(a)(6)(B) of this title” and inserting “paragraph (1)”;

(3) in section 207 (25 U.S.C. 2206)—

(A) in subsection (c)—

1 (i) by redesignating paragraph (3) as  
 2 paragraph (4); and

3 (ii) by inserting after paragraph (2)  
 4 the following:

5 “(3) ALIENATION OF JOINT TENANCY INTER-  
 6 ESTS.—

7 “(A) IN GENERAL.—With respect to any  
 8 interest held in joint tenancy in accordance with  
 9 this subsection—

10 “(i) nothing in this subsection alters  
 11 the ability of an owner of such an interest  
 12 to convey a life estate in the undivided  
 13 joint tenancy interest of the owner; and

14 “(ii) only the last remaining owner of  
 15 such an interest may devise or convey  
 16 more than a life estate in the interest.

17 “(B) APPLICATION OF PROVISION.—This  
 18 paragraph shall not apply—

19 “(i) to any conveyance, sale, or trans-  
 20 fer that is part of an agreement referred to  
 21 in subsection (e); or

22 “(ii) to a co-owner of a joint tenancy  
 23 interest.”; and

1 (B) in subsection (g)(5), by striking “this  
 2 section” and inserting “subsections (a) and  
 3 (b)”;

4 (4) in section 213 (25 U.S.C. 2212)—

5 (A) in subsection (a)(2), by striking “(A)  
 6 IN GENERAL.—” and all that follows through  
 7 “the Secretary shall submit” and inserting  
 8 “The Secretary shall submit”;

9 (B) in subsection (b), by striking para-  
 10 graph (4) and inserting the following:

11 “(4) shall minimize the administrative costs as-  
 12 sociated with the land acquisition program through  
 13 the use of policies and procedures designed to ac-  
 14 commodate the voluntary sale of interests under the  
 15 pilot program under this section, notwithstanding  
 16 the existence of any otherwise applicable policy, pro-  
 17 cedure, or regulation, through the elimination of du-  
 18 plicate—

19 “(A) conveyance documents;

20 “(B) administrative proceedings; and

21 “(C) transactions.”; and

22 (C) in subsection (c)—

23 (i) in paragraph (1)—

24 (I) in subparagraph (A), by strik-  
 25 ing “landowner upon payment” and

1 all that follows and inserting the fol-  
 2 lowing: “landowner—

3 “(i) on payment by the Indian land-  
 4 owner of the amount paid for the interest  
 5 by the Secretary; or

6 “(ii) if—

7 “(I) the Indian referred to in this  
 8 subparagraph provides assurances  
 9 that the purchase price will be paid by  
 10 pledging revenue from any source, in-  
 11 cluding trust resources; and

12 “(II) the Secretary determines  
 13 that the purchase price will be paid in  
 14 a timely and efficient manner.”; and

15 (II) in subparagraph (B), by in-  
 16 serting before the period at the end  
 17 the following: “unless the interest is  
 18 subject to a foreclosure of a mortgage  
 19 in accordance with the Act of March  
 20 29, 1956 (25 U.S.C. 483a)”; and

21 (ii) in paragraph (3), by striking “10  
 22 percent of more of the undivided interests”  
 23 and inserting “an undivided interest”;

24 (5) in section 214 (25 U.S.C. 2213), by striking  
 25 subsection (b) and inserting the following:

1       “(b) APPLICATION OF REVENUE FROM ACQUIRED  
2 INTERESTS TO LAND CONSOLIDATION PILOT PRO-  
3 GRAM.—

4               “(1) IN GENERAL.—The Secretary shall have a  
5       lien on any revenue accruing to an interest described  
6       in subsection (a) until the Secretary provides for the  
7       removal of the lien under paragraph (3) or (4).

8               “(2) REQUIREMENTS.—

9                       “(A) IN GENERAL.—Until the Secretary  
10       removes a lien from an interest in land under  
11       paragraph (1)—

12                               “(i) any lease, resource sale contract,  
13                               right-of-way, or other document evidencing  
14                               a transaction affecting the interest shall  
15                               contain a clause providing that all revenue  
16                               derived from the interest shall be paid to  
17                               the Secretary; and

18                               “(ii) any revenue derived from any in-  
19                               terest acquired by the Secretary in accord-  
20                               ance with section 213 shall be deposited in  
21                               the fund created under section 216.

22               “(B) APPROVAL OF TRANSACTIONS.—Not-  
23       withstanding section 16 of the Act of June 18,  
24       1934 (commonly known as the ‘Indian Reorga-  
25       nization Act’) (25 U.S.C. 476), or any other



1 provision of law, until the Secretary removes a  
2 lien from an interest in land under paragraph  
3 (1), the Secretary may approve a transaction  
4 covered under this section on behalf of an In-  
5 dian tribe.

6 “(3) REMOVAL OF LIEN AFTER FINDINGS.—  
7 The Secretary may remove a lien referred to in  
8 paragraph (1) if the Secretary makes a finding  
9 that—

10 “(A) the costs of administering the interest  
11 from which revenue accrues under the lien will  
12 equal or exceed the projected revenues for the  
13 parcel of land involved;

14 “(B) in the discretion of the Secretary, it  
15 will take an unreasonable period of time for the  
16 parcel of land to generate revenue that equals  
17 the purchase price paid for the interest; or

18 “(C) a subsequent decrease in the value of  
19 land or commodities associated with the parcel  
20 of land make it likely that the interest will be  
21 unable to generate revenue that equals the pur-  
22 chase price paid for the interest in a reasonable  
23 time.

24 “(4) OTHER REMOVAL OF LIEN.—In accord-  
25 ance with regulations to be promulgated by the Sec-

retary, and in consultation with tribal governments and other entities described in section 213(b)(3), the Secretary shall periodically remove liens referred to in paragraph (1) from interests in land acquired by the Secretary.”;

(6) in section 216 (25 U.S.C. 2215)—

(A) in subsection (a), by striking paragraph (2) and inserting the following:

“(2) collect all revenues received from the lease, permit, or sale of resources from interests acquired under section 213 or paid by Indian landowners under section 213.”; and

(B) in subsection (b)—

(i) in paragraph (1)—

(I) in the matter preceding subparagraph (A), by striking “Subject to paragraph (2), all” and inserting “All”;

(II) in subparagraph (A), by striking “and” at the end;

(III) in subparagraph (B), by striking the period at the end and inserting “; and”; and

(IV) by adding at the end the following:

1           “(C) be used to acquire undivided interests  
2           on the reservation from which the income was  
3           derived.”; and

4                   (ii) by striking paragraph (2) and in-  
5           serting the following:

6           “(2) USE OF FUNDS.—The Secretary may use  
7           the revenue deposited in the Acquisition Fund under  
8           paragraph (1) to acquire some or all of the undi-  
9           vided interests in any parcels of land in accordance  
10          with section 205.”;

11          (7) in section 217 (25 U.S.C. 2216)—

12                   (A) in subsection (e)(3), by striking “pro-  
13           spective applicants for the leasing, use, or con-  
14           solidation of” and insert “any person that is  
15           leasing, using, or consolidating, or is applying  
16           to lease, use, or consolidate,”; and

17                   (B) by striking subsection (f) and inserting  
18           the following:

19          “(f) PURCHASE OF LAND BY INDIAN TRIBE.—

20                   “(1) IN GENERAL.—Except as provided in para-  
21           graph (2), before the Secretary approves an applica-  
22           tion to terminate the trust status or remove the re-  
23           strictions on alienation from a parcel of trust or re-  
24           stricted land, the Indian tribe that exercises jurisdic-  
25           tion over the parcel shall have the opportunity—

1           “(A) to match any offer contained in the  
2 application; or

3           “(B) in a case in which there is no pur-  
4 chase price offered, to acquire the interest in  
5 the parcel by paying the fair market value of  
6 the interest.

7           “(2) EXCEPTION FOR FAMILY FARMS.—

8           “(A) IN GENERAL.—Paragraph (1) shall  
9 not apply to a parcel of trust or restricted land  
10 that is part of a family farm that is conveyed  
11 to a member of the family of a landowner (as  
12 defined in section 206(c)(2)(A)(iv)) if—

13           “(i) the interest is offered for sale to  
14 an entity that is not a member of the fam-  
15 ily of the landowner; and

16           “(ii) the Indian tribe that exercises  
17 jurisdiction over the land is afforded the  
18 opportunity to purchase the interest.

19           “(B)                   APPLICABILITY.—Section  
20 206(c)(2)(A) shall apply with respect to the re-  
21 cording and mortgaging of any trust or re-  
22 stricted land referred to in subparagraph (A).”;  
23 and

1           (8) in section 219(b)(1)(A) (25 U.S.C.  
2       2218(b)(1)(A)), by striking “100” and inserting  
3       “90”.

4       (b) DEFINITION.—

5           (1) IN GENERAL.—Section 202 of the Indian  
6       Land Consolidation Act (25 U.S.C. 2201) is amend-  
7       ed by striking paragraph (2) and inserting the fol-  
8       lowing:

9           “(2) INDIAN.—

10           “(A) IN GENERAL.—The term ‘Indian’  
11       means—

12           “(i) any person that is a member of  
13       any Indian tribe or is eligible to become a  
14       member of any Indian tribe;

15           “(ii) subject to subparagraph (B), any  
16       person that has been found to meet the  
17       definition of ‘Indian’ under any Federal  
18       law; and

19           “(iii) with respect to the ownership,  
20       devise, or descent of trust or restricted  
21       land in the State of California, any person  
22       that meets the definition of ‘Indians of  
23       California’ contained in the first section of  
24       the Act of May 18, 1928 (25 U.S.C. 651),  
25       until otherwise provided by Congress in ac-

cordance with section 809(b) of the Indian Health Care Improvement Act (25 U.S.C. 1679(b)).

“(B) EXCLUSIONS.—The term ‘Indian’ does not include any person excluded from a definition described in subparagraph (A)(ii) by a regulation promulgated by the Secretary in a case in which the Secretary determines that the definition is not consistent with the purposes of this Act, unless the definition described in subparagraph (A)(ii) is contained in a law relating to—

“(i) agriculture;

“(ii) cultural resources;

“(iii) economic development;

“(iv) grazing;

“(v) housing;

“(vi) Indian schools;

“(vii) natural resources;

“(viii) any other program with benefits intended to run to Indian landowners;

or

“(ix) any land-related program that takes effect after the date of enactment of this subparagraph.”.

1           (2) APPLICABILITY.—Any exclusion referred to  
 2       in the amendment made by paragraph (1) shall  
 3       apply only to a decedent who dies after the date on  
 4       which the Secretary of the Interior promulgates a  
 5       regulation providing for the exclusion.

6       (c) MORTGAGES AND DEEDS OF TRUST.—The Act  
 7       of March 29, 1956 (25 U.S.C. 483a), is amended in the  
 8       first sentence of subsection (a) by inserting after “any  
 9       land” the following: “(including land owned by any person  
 10      in passive trust status in accordance with section 207A  
 11      of the Indian Land Consolidation Act)”.

12      (d) ISSUANCE OF PATENTS.—Section 5 of the Act of  
 13      February 8, 1887 (25 U.S.C. 348), is amended by striking  
 14      the second proviso and inserting the following: “*Provided*,  
 15      That the rules of intestate succession under the Indian  
 16      Land Consolidation Act (25 U.S.C. 2201 et seq.) (includ-  
 17      ing a tribal probate code approved under that Act or regu-  
 18      lations promulgated under that Act) shall apply to that  
 19      land for which patents have been executed and delivered:”.

20      (e) TRANSFERS OF RESTRICTED INDIAN LAND.—  
 21      Section 4 of the Act of June 18, 1934 (25 U.S.C. 464),  
 22      is amended in the first proviso by striking “, in accordance  
 23      with” and all that follows through the colon and inserting  
 24      “in accordance with the Indian Land Consolidation Act  
 25      (25 U.S.C. 2201 et seq.) (including a tribal probate code

1 approved under that Act or regulations promulgated under  
2 that Act):”.

3 **SEC. 6. INHERITANCE OF CERTAIN TRUST OR RESTRICTED**  
4 **LAND.**

5 (a) IN GENERAL.—Section 5 of Public Law 98–513  
6 (98 Stat. 2413) is amended to read as follows:

7 **“SEC. 5. INHERITANCE OF CERTAIN TRUST OR RESTRICTED**  
8 **LAND.**

9 “(a) IN GENERAL.—Notwithstanding any other pro-  
10 vision of this Act—

11 “(1) the owner of an interest in trust or re-  
12 stricted land within the reservation may not devise  
13 an interest (including a life estate under section 4)  
14 in the land that is less than 2.5 acres to more than  
15 1 tribal member unless each tribal member already  
16 holds an interest in that land; and

17 “(2) any interest in trust or restricted land  
18 within the reservation that is less than 2.5 acres  
19 that would otherwise pass by intestate succession  
20 (including a life estate in the land under section 4),  
21 or that is devised to more than 1 tribal member that  
22 is not described in paragraph (1), shall revert to the  
23 Indian tribe, to be held in the name of the United  
24 States in trust for the Indian tribe.

25 “(b) NOTICE.—



1           “(1) IN GENERAL.—Not later than 180 days  
2           after the date of enactment of the Indian Probate  
3           Reform Act of 2003, the Secretary shall provide no-  
4           tice to owners of trust or restricted land within the  
5           Lake Traverse Reservation of the provisions of this  
6           section by—

7                       “(A) direct mail;

8                       “(B) publication in the Federal Register;

9                       or

10                      “(C) publication in local newspapers.

11           “(2) CERTIFICATION.—After providing notice  
12           under paragraph (1), the Secretary shall—

13                      “(A) certify that the requirements of this  
14                      subsection have been met; and

15                      “(B) shall publish notice of that certifi-  
16                      cation in the Federal Register.”.

17           (b) APPLICABILITY.—This section and the amend-  
18           ment made by this section shall not apply with respect  
19           to the estate of any person who dies before the date that  
20           is 1 year after the date on which the Secretary makes the  
21           required certification under section 5(b) of Public Law  
22           98–513 (98 Stat. 2413) (as amended by subsection (a)).

1   **SEC. 7. EFFECTIVE DATE.**

2           The amendments made by this Act shall not apply  
3 to the estate of an individual who dies before the later  
4 of—

5           (1) the date that is 1 year after the date of en-  
6 actment of this Act; or

7           (2) the date specified in section 207(g)(5) of  
8 the Indian Land Consolidation Act (25 U.S.C.  
9 2206(g)(5)).

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